ERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 602

NEW YORK LIFE INSURANCE COMPANY,
PETITIONER,

vs.

DEMETRIOS P. VIGLAS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 23, 1935.

CERTIORARI GRANTED DECEMBER 23, 1935.

SUPREME COURT OF THE UNITED STATES

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—7296-C

[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 5790. Law Docket

DEMETRIOS P. VIGLAS, Plaintiff,

v.

NEW YORK LIFE INSURANCE COMPANY, Defendant

WRIT OF ATTACHMENT

[SEAL.]

MASSACHUSETTS DISTRICT, ss:

The President of the United States of America, to the Marshal of our District of Massachusetts, or his Deputy, Greeting:

We command you to attach the goods or estate of New York Life Insurance Company, a corporation duly organized and existing under the laws of the state of New York and having an usual place of business in Boston, in our District of Massachusetts, to the value of fifteen thousand dollars, and summon the said defendant, (if it may be found in your district), to appear before our Judge of our District Court, next to be holden at Boston, within and for our said District of Massachusetts, on the first Tuesday of Decem-
[fol. 2] ber, then and there, in our said court, to answer unto Demetrios P. Viglas, of Boston, Suffolk County, Massachusetts, in an action of contract.

To the damage of the said plaintiff (as he says) the sum of fifteen thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein.

Witness, the Honorable James A. Lowell, at Boston, the ninth day of November, in the year of our Lord one thousand nine hundred and thirty-three.

James S. Allen, Clerk, by Helen I. Tweedy, Deputy Clerk.

OFFICER'S RETURN ON WRIT

UNITED STATES OF AMERICA,
Massachusetts District, ss:

Boston, November 9, 1933.

Pursuant hereunto I have this day attached a chip as the property of the within-named New York Life Insurance Company, and thereafter on the same day I summoned the said defendant corporation to appear at court and answer as within directed by giving in hand to Merton L. Brown, Commissioner of Insurance for the Commonwealth of Massachusetts, at Boston, in said District, two copies of the within writ together with two original summons to this writ; also $2.00, his statutory fee.

William J. Keville, United States Marshal, by Jeremiah F. Sullivan, Deputy.

The writ in this cause is dated the ninth day of November, 1933, and was duly entered at the December Term of this court, A. D. 1933.

IN UNITED STATES DISTRICT COURT

DECLARATION—Filed December 5, 1933

[Memorandum.—Copy of declaration is here omitted, as a substituted declaration was subsequently filed by consent and will be found hereafter recorded. James S. Allen, Clerk.]

[fol. 3] IN UNITED STATES DISTRICT COURT

ANSWER—Filed December 15, 1933

The defendant in the above case denies each and every material allegation in the plaintiff's writ and declaration contained.

By its Attorney, F. H. Nash.

IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO AMEND WRIT—Filed by consent November 13, 1934; allowed November 16, 1934

Now comes the plaintiff and respectfully moves that he be permitted to amend his writ by changing the ad damnum thereof from $15,000 to $20,000.

By his Attorney, Harris J. Booras.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S SUBSTITUTE DECLARATION—Filed by consent November 13, 1934

Count 1. The plaintiff says that on or about the 7th day of February, 1927, he entered into a contract of insurance with the defendant, a copy of which policy of insurance is filed herewith and marked "Exhibit A." That, as appears by said contract, the plaintiff was to pay the defendant the sum of $76 annually as premium, in semi-annually payments of $38 each on the seventh days of February and August of each year, for a period of twenty years, or until death, or until the happening of total disability, as therein provided; that the face amount of said policy was $2,000; that under the terms of said contract the plaintiff was to pay premiums for twenty years, which premiums were to be waived by the company in accordance with certain provi- [fol. 4] sions in said contract; the policy was to be in full force and effect during the entire life of the plaintiff; that the plaintiff, at his election, after the policy was in effect for three years, could claim the cash surrender value of the policy as therein provided.

The plaintiff further says that on or about September 11, 1931, he became permanently and totally disabled within the terms and provisions of the contract; that in addition to his being totally and permanently disabled, as provided in the first clauses of the total and permanent disability section of said contract, the plaintiff says he lost the total and irrecoverable use of one hand and one foot; that because of said total and permanent disability, of which the plaintiff made due proof, the defendant commenced pay-

ing the plaintiff disability benefits on October 11, 1931, at the rate of $20 per month, in accordance with said contract, and continued paying said monthly benefits up to and including July 11, 1933, and gave the plaintiff statements waiving the payment of the premiums due on February 7, August 7, 1932, and February 7, 1933; that on or about September 1, 1933, the defendant refused to make the monthly payment due August 11, 1933, and refused to waive the semi-annual premium due August 7, 1933, asserting to the plaintiff as its ground for such refusal that, since it appeared to the defendant that for some time past the plaintiff had not been continuously totally disabled within the meaning of the disability benefit provision of the policy, the defendant would make no further monthly disability payments, and that the premiums due on and after August 7, 1933, would be payable in conformity with the terms of the contract.

Upon the expiration of the days of grace after August 7, 1933, for the payment of the semi-annual premium, the defendant, on or about September 19, 1933, declared the policy as lapsed upon its records, the premiums not having been waived by the defendant nor paid by the plaintiff. That thereupon, the plaintiff having been continuously, from September 11, 1931, totally and permanently disabled, and also being then totally and permanently disabled within the provisions of the contract, and that he having on his part complied with, was complying with and was ready and [fol. 5] willing to comply with in the future all the conditions, obligations and terms of said contract, which were by him to be observed, complied with, and performed, elected to treat said wrongful refusal of the defendant to perform its obligations under said contract as a repudiation and renunciation of the entire contract, which relieved the plaintiff from his obligations thereunder. The plaintiff further says that he is no longer an insurable risk and cannot procure another policy to take the place of the contract so repudiated by the defendant, and, further, that his total and permanent disability as defined within the provisions of the contract will continue for the rest of his life.

The plaintiff says that on or about the date of said wrongful breach, repudiation and renunciation of the contract by the defendant, the plaintiff had an expectancy of life, in accordance with the American Table of Mortality, of thirty-

six years. That said contract was executed on February 7, 1927, which is about six years prior to the date of the wrongful breach by the defendant; that on the forty-second anniversary of said policy said contract would have a cash surrender value of $1,408; that the plaintiff, because of the wrongful breach, termination, renunciation and repudiation of the said contract by the defendant, claims damages for the total breach thereof, and says that the defendant owes him for breach of the said life insurance contract the cash surrender value of this policy on its forty-second year the sum of $1,408.

Count. 2. The plaintiff says that on or about the seventh day of February, 1927, he entered into a contract of insurance with the defendant, a copy of which policy of insurance is filed herewith and marked "Exhibit A". That, as appears by said contract, the plaintiff was to pay the defendant the sum of $76 annually as premium, in semi-annual payments of $38 each on the seventh days of February and August of each year, for a period of twenty years, or until death, or until the happening of total disability, as therein provided; that the face amount of said policy was $2,000; that under the terms of said contract the plaintiff was to pay premiums for twenty years, which premiums were to be waived by the company in accordance with certain provisions in said contract; the policy was to be in full force and effect during the entire life of the plaintiff; that the [fol. 6] plaintiff, at his election, after the policy was in effect for three years, could claim the cash surrender value of the policy as therein provided.

The plaintiff further says that on or about September 11, 1931, he became permanently and totally disabled within the terms and provisions of the contract; that in addition to his being totally and permanently disabled, as provided in the first clauses of the total and permanent disability section of said contract, the plaintiff says he lost the total and irrecoverable use of one hand and one foot; that because of said total and permanent disability, of which the plaintiff made due proof, the defendant commenced paying the plaintiff disability benefits on October 11, 1931, at the rate of $20 per month, in accordance with said contract, and continued paying said monthly benefits up to and including July 11, 1933, and gave the plaintiff statements waiving the payment of

the premiums due on February 7, August 7, 1932, and February 7, 1933; that on or about September 1, 1933, the defendant refused to make the monthly payment due August 11, 1933, and refused to waive the semi-annual premium due August 7, 1933, asserting to the plaintiff as it ground for such refusal that since it appeared to the defendant that for some time past the plaintiff had not been continuously totally disabled within the meaning of the disability benefit provision of the policy, the defendant would make no further monthly disability payments, and that the premiums due on and after August 7, 1933, would be payable in conformity with the terms of the contract. Upon the expiration of the days of grace after August 7, 1933, for the payment of the semi-annual premium, the defendant, on or about September 19, 1933, declared the policy as lapsed upon its records, the premiums not having been waived by the defendant nor paid by the plaintiff. That thereupon, the plaintiff having been continuously, from September 11, 1931, totally and permanently disabled, and also being then totally and permanently disabled within the provisions of the contract, and that he having on his part complied with, was complying with and was ready and willing to comply with in the future, all the conditions, obligations and terms of said contract, which were by him to be observed, complied with and performed, elected to treat said wrongful refusal of the defendant to perform its obligations under said [fol. 7] contract as a repudiation and renunciation of the entire contract, which relieved the plaintiff from his obligations thereunder. The plaintiff further says that he is no longer an insurable risk and cannot procure another policy to take the place of the contract so repudiated by the defendant, and, further, that his total and permanent disability as defined within the provisions of the contract will continue for the rest of his life.

That on or about the date of said wrongful breach of the contract by the defendant, the plaintiff had an expectancy of life, in accordance with the American Table of Mortality, of thirty-six years, and that as of said date of the defendant's breach the defendant owed to the plaintiff the sum of $15,900 damages for breach of the total and permanent disability provisions, in accordance with the following schedule:

Item 1. 39 months disability from July 11, 1933, at $20 per month	$780.00
Item 2. For the next 60 consecutive months after the first period, at $30 per month	1,800.00
Item 3. 333 months of disability next after the previous periods, at $40 per month	13,320.00
	$15,900.00

By his Attorney, Harris J. Booras.

EXHIBIT A

[Memorandum.—By consent of parties insurance policy, marked Exhibit "A," and referred to in the foregoing plaintiff's substitute declaration, is not here printed, but is to be transmitted with the record on appeal. James S. Allen, Clerk.]

IN UNITED STATES DISTRICT COURT

DEMURRER.—Filed November 14, 1934

The defendant demurs to each count of the plaintiff's declaration and for cause of demurrer shows:

[fol. 8] The facts alleged do not support the plaintiff's conclusion that upon the defendant's assertion that, the plaintiff being no longer totally and permanently disabled within the terms of the policy, it would not continue to make the monthly payments and waive the semi-annual premiums, thereupon the plaintiff acquired a right to recover from the defendant forthwith the aggregate of all benefits which would be payable to him if he should live out a normal expectancy under the Mortality Table while continuously totally disabled.

The facts alleged show a right in the plaintiff only to sue for monthly instalments claimed to be already due and for premiums which he claims ought to have been waived, prior to the date of the writ, and a right in equity if seasonably exercised to restrain the defendant from declaring the policy lapsed for non-payment of premiums.

Wherefore the declaration sets forth a cause of action only for payments under the contract between the date as of which the defendant ceased to continue monthly payments and waiver of premiums, namely, July 11, 1933, and the date of the writ, namely, November 9, 1933, as follows: The payments of $20 each claimed by the plaintiff to be due on August 11, September 11 and October 11, 1933, and waiver of the semi-annual premium of $38 due August 7, 1933, a total of $98, which is a sum beneath the jurisdiction of this court.

By its Attorney, F. H. Nash.

Certificate

I, Frederick H. Nash, attorney for the defendant in the above-entitled case, certify that the foregoing demurrer is filed in good faith and is based upon substantial grounds and is not intended merely for delay.

Frederick H. Nash.

Recital as to Order Sustaining Demurrer

On the nineteenth day of November, 1934, said cause is set down for hearing on demurrer, the Honorable Hugh D. McLellan, District Judge, sitting, and after due consideration thereon had, to wit, November 22, 1934, a memorandum of the court is announced, sustaining demurrer.

[fol. 9] On the twenty-eighth day of November, A. D. 1934, the following Motion for Entry of Judgment is filed and assented to:

In United States District Court

Motion for Entry of Judgment—Filed November 28, 1934

Whereas the defendant's demurrer to the plaintiff's declaration in the above-entitled action was sustained on November 22, 1934, by order of Judge McLellan,

The defendant now moves that judgment for the defendant be entered forthwith.

By its Attorney, F. H. Nash.

IN UNITED STATES DISTRICT COURT

JUDGMENT

On the said twenty-eighth day of November, the foregoing motion for entry of judgment is allowed by the court.

Thereupon, to wit, November 28, 1934, it is considered by the court, the Honorable Hugh D. McLellan, District Judge, sitting, that the said Demetrios P. Viglas, plaintiff, take nothing by his said writ, and that the said New York Life Insurance Company, defendant, recover of the said plaintiff its costs of suit taxed at —.

IN UNITED STATES DISTRICT COURT

MEMORANDUM ON DEMURRER—November 22, 1934

The parties are agreed that it is desirable to have the question as to the validity of the declaration solved before they embark upon a trial which they say will be somewhat long and will involve considerable expense for expert testimony.

The demurrer, which attacks both counts of the declaration in the particulars specifically pointed out (Massachusetts General Laws, Chapter 231, Section 18, Clause 4) was argued at length. While there is authority in support of the declaration (see the majority opinion in Federal Life Insurance Company v. Rascoe, 12 Fed. (2d) 693, and Equitable Life Assurance Society v. Pool, 71 S. W. (2d) 455 [Arkansas]); there is also authority in support of the demurrer (See Kimel et al. v. Missouri State Life Insurance Company, 71 Fed. (2d) 921; Parks v. Maryland Casualty Company, 59 Fed. (2d) 736; LaVecchia v. Connecticut Mutual Life Insurance Company, 1 Fed. Supp. 588; Kith- [fol. 10] cart v. Metropolitan Life Insurance Company, 1 Fed. Supp. 719; Wyll v. Pacific Mutual Life Insurance Company, 3 Fed. Supp. 483; and Judge Denison's dissenting opinion in Federal Life Insurance Company v. Rascoe, surpa. See also Judge West's statement to the jury [as yet unpublished] of his reasons for ordering a verdict for the defendant in McLaughlin v. New York Life Insurance Company, in which he distinguishes that case from the Rascoe

case). Aetna Life Insurance Company v. Geher, 50 Fed. (2d) 657, and Pierce v. Tennessee Coal, Iron and Railroad Company, 173 U. S. 1, cited at the argument, are not at all controlling, so far as the question herein involved is concerned. Considering the nature of the contract, the alleged breach thereof by the defendant is not of such a character as to warrant recovery now of the present value of payments to be made in the future. This conclusion does not rest upon the cases decided in jurisdictions like Massachusetts, where recovery based upon anticipatory breaches is not favored. It seems to me that by the weight of authority this case goes beyond the limits of the rule which prevails in jurisdictions where the doctrine of anticipatory breach is accepted.

The demurrer is sustained.

Hugh D. McLellan, District Judge.

Recital as to Order Allowing Appeal

From the foregoing judgment, a petition for appeal to the United States Circuit Court of Appeals for the First Circuit was filed by the plaintiff on the seventeenth day of December, 1934, and allowed by the court on the eighteenth day of said December, bond on appeal having been waived.

In United States District Court

Assignment of Errors—Filed December 17, 1934

Now comes the plaintiff in this action, in connection with his petition for allowance of appeal, and makes the following assignment of errors which he avers occurred by the order of the District Court in said cause, and the rendition of judgment against the plaintiff appearing upon the record herein:

[fols. 11 & 12] 1. The court erred in sustaining the demurrer to the plaintiff's substitute declaration.

By his Attorney Harris J. Booras.

Recital as to Citation

A citation on appeal was issued on December 18, 1934, being made returnable in the United States Circuit Court of Appeals on January 17, 1935.

Clerk's certificate to foregoing transcript omitted in printing.

[Memorandum. An order of enlargement of time for docketing case to, and including February 16, 1935, is here omitted. A. I. Charron, Clerk.]

[fol. 13] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1934

No. 3012

DEMETRIOS P. VIGLAS, Plaintiff, Appellant,

v.

NEW YORK LIFE INSURANCE COMPANY, Defendant, Appellee

Appeal from the District Court of the United States for the District of Massachusetts

Before Bingham, Wilson and Morton, JJ.

OPINION OF THE COURT—Filed July 13, 1935

MORTON, J.:

This is an appeal from a judgment for the defendant which was entered after a demurrer to the plaintiff's declaration had been sustained by the District Judge. The question presented is whether the plaintiff's declaration in its final form stated a cause of action within the jurisdiction of the Federal Court. There was the necessary diversity of citizenship.

In Count I of the declaration the plaintiff claimed $1408, as the cash surrender value of the policy in question at a future date. This amount is less than the jurisdictional requirement. The parties correctly assumed that there is no jurisdiction in the Federal Court unless Count II stated a good cause of action. This count is as follows:

"The plaintiff says that on or about the seventh day of February, 1927, he entered into a contract of insurance with the defendant, a copy of which policy of insurance is filed

herewith and marked 'Exhibit A'. That, as appears by said [fol. 14] contract, the plaintiff was to pay the defendant the sum of $76 annually as premium, in semi-annual payments of $38 each on the seventh days of February and August of each year, for a period of twenty years, or until death, or until the happening of total disability, as therein provided; that the face amount of said policy was $2,000; that under the terms of said contract the plaintiff was to pay premiums for twenty years, which premiums were to be waived by the company in accordance with certain provisions in said contract; the policy was to be in full force and effect during the entire life of the plantiff; that the plaintiff, at his election, after the policy was in effect for three years, could claim the cash surrender value of the policy as therein provided.

"The plaintiff further says that on or about September 11, 1931, he became permanently and totally disabled within the terms and provisions of the contract; that in addition to his being totally and permanently disabled, as provided in the first clauses of the total and permanent disability section of said contract, the plaintiff says he lost the total and irrecoverable use of one hand and one foot; that because of said total and permanent disability, of which the plaintiff made due proof, the defendant commenced paying the plaintiff disability benefits on October 11, 1931, at the rate of $20 per month, in accordance with said contract, and continued paying said monthly benefits up to and including July 11, 1933, and gave the plaintiff statements waiving the payment of the premiums due on February 7, August 7, 1932, and February 7, 1933; that on or about September 1, 1933, the defendant refused to make the monthly payment due August 11, 1933, and refused to waive the semi-annual premium due August 7, 1933, asserting to the plaintiff as its ground for such refusal that since it appeared to the defendant that for some time past the plaintiff had not been continuously totally disabled within the meaning of the disability benefit provision of the policy, the defendant would make no further monthly disability payments, and that the premiums due on and after August 7, 1933, would be payable in conformity with the terms of the contract. Upon the expiration of the days of grace after August 7, 1933, for the payment of the semi-annual pre-

mium, the defendant, on or about September 19, 1933, declared the policy as lapsed upon its records, the premiums not having been waived by the defendant nor paid by the plaintiff. That thereupon, the plaintiff having been con-
[fol. 15] tinuously, from September 11, 1931, totally and permanently disabled, and also being then totally and permanently disabled within the provisions of the contract, and that he having on his part complied with, was complying with and was ready and willing to comply with in the future, all the conditions, obligations and terms of said contract, which were by him to be observed, complied with and performed, elected to treat said wrongful refusal of the defendant to perform its obligations under said contract as a repudiation and renunciation of the entire contract, which relieved the plaintiff from his obligations thereunder. The plaintiff further says that he is no longer an insurable risk and cannot procure another policy to take the place of the contract so repudiated by the defendant, and, further, that his total and permanent disability as defined within the provisions of the contract will continue for the rest of his life.

"That on or about the date of said wrongful breach of the contract by the defendant the plaintiff had an expectancy of life, in accordance with the American Table of Mortality, of thirty-six years, and that as of said date of the defendant's breach the defendant owed to the plaintiff the sum of $15,900 damages for breach of the total and permanent disability provisions, in accordance with the following schedule:

Item 1. 39 months disability from July 11, 1933, at $20 per month	$780.00
Item 2. For the next 60 consecutive months after the first period, at $30 per month	$1,800.00
Item. 3. 333 months of disability next after the previous periods, at $40 per month	13,300.00
	$15,900.00"

The defendant's demurrer is as follows:

"The facts alleged do not support the plaintiff's conclusion that upon the defendant's assertion that, the plaintiff being no longer totally and permanently disabled within the

terms of the policy, it would not continue to make the monthly payments and waive the semi-annual premiums, thereupon the plaintiff acquired a right to recover from the defendant forthwith the aggregate of all benefits which would be payable to him if he should live out a normal expectancy under the Mortality Table while continuously totally disabled.

"The facts alleged show a right in the plaintiff only to sue for monthly instalments claimed to be already due and [fol. 16] for premiums which he claims ought to have been waived, prior to the date of the writ, and a right in equity if seasonably exercised to restrain the defendant from declaring the policy lapsed for non-payment of premiums.

"Wherefore the declaration sets forth a cause of action only for payments under the contract between the date as of which the defendant ceased to continue monthly payments and waiver of premiums, namely, July 11, 1933, and the date of the writ, namely, November 9, 1933, as follows: The payments of $20 each claimed by the plaintiff to be due on August 11, September 11 and October 11, 1933, and waiver of the semi-annual premium of $38 due August 7, 1933, a total of $98, which is a sum beneath the jurisdiction of this court."

The law on this subject has recently been stated in Mobley v. New York Life Insurance Co., U. S. Supreme Court, 27 May 1935. "Mere refusal, upon mistake or misunderstanding as to matters of fact or upon an erroneous construction of the disability clause, to pay a monthly benefit when due is sufficient to constitute a breach of that provision, but it does not amount to a renunciation or repudiation of the policy." Butler, J. See to Daley v. People's Bldg., etc., Assoc., 178 Mass. 13, 18 and Indiana Life Endowment Co. v. Reed, 103 N. E. 77. On the other hand "Repudiation by one party, to be sufficient in any case to entitle the other to treat the contract as absolutely and finally broken and to recover damages as upon total breach, must at least amount to an unqualified refusal or declaration of inability, substantially to perform according to the terms of his obligation." Butler, J. Citing authorities. See too Pierce v. Tenn. Coal, Iron, etc., Co., 173 U. S. 1; Lovell v. St. Louis Mutual Ins. Co., 111 U. S. 264; Parker v. Russell, 133 Mass. 74.

As we construe the declaration it alleges a complete and unqualified denial by the defendant of all liability on the policy. It states that the defendant not only refused to pay benefits due but wrongfully lapsed the policy for non-payment of premiums. An unconditional lapsing of the policy was a complete termination of it and a denial by the defendant of any further liability on it. There is no allegation [fol. 17] that the defendant recognizes any further rights of the plaintiff in the policy, or any further liability upon it. The facts alleged are essentially different from those in the Mobley case where it was held that the evidence did not show repudiation of the policy or a complete denial of liability on it by the company. On the allegations of the declaration we are of opinion that the plaintiff was entitled to maintain the action and, if the lapsing was found to be a complete and unqualified denial by the defendant of any further liability on the policy and was unjustified that the plaintiff would be entitled to recover damages equivalent to the value to him of the contract which was broken. See Day v. Conn. General Life Ins. Co., 45 Conn. 480; Merrick v. Northwestern Nat. Life Ins. Co., 102 N. W. 593; Indiana Life Endowment Co. v. Reed, 103 N. E. 77; and O'Neill v. Sup. Council, 57 Atl. 463. (Pitney, J.) in all of which it was said that on unjustified repudiation of a policy of insurance by the defendant company, the plaintiff might recover the value of the policy at the time when it was declared forfeited.

The doctrine of anticipatory breach which was discussed in argument has no application to the facts stated in the declaration. That doctrine, strictly stated, applies to situations in which the parties have made a bi-lateral executory contract looking to performance by each in the future and before the time for performance arrived one party notified the other that he will not go on. Roehm v. Horst, 178 U. S. 1 holds that an action against the repudiating party lies immediately, before time for his performance has arrived; and Daniels v. Newton, 114 Mass. 530, holds the contrary. Here the time for performance by the defendant had arrived and there was both a present breach and a complete repudiation of the entire contract. In Pierce v. Tenn, supra, repudiation by the defendant of an agreement by it to pay the plaintiff, who had been injured, stated monthly payments as long as his disability should continue, coupled

with non-payment of sums due, was held to warrant the [fol. 18] assessment of damages equivalent to the value to the plaintiff of the broken contract. In Lovell v. St. Louis Mutual Ins. Co., 111 U. S. 204, where the defendant company went out of business and transferred its assets to a new company, it was held that "the complainant had a right to consider it (the policy) as determined by the act of the company and to demand what was fully due him in the exigency. Of this we think there can be no doubt." Bradley, J., page 274. Here the company's act in lapsing the policy was, on the allegations, a determination of it by the company. In Parker v. Russell, 133 Mass. 74, failure by the defendant to make any payments for about two years on a contract to support the plaintiff during the latter's life was held to warrant a finding that the entire contract was broken and an assessment of damages equivalent to the value of the contract to the plaintiff.

The principle of those decisions applies to the present case. We perceive no sufficient reason why life insurance contracts should stand on any different or exceptional footing. For obvious reasons the continuance of a recognized contractual obligation by the company may be of importance to the insured (Roehm v. Horst, supra), especially where as in this case the obligation is for the regular payment of stipulated sums. If as is here alleged the insured has become uninsurable, the wrongful repudiation of the policy by the insurance company may be a matter of the utmost gravity. The proposition that, if a contract, made upon an executed consideration to pay an annuity, is broken by the refusal to pay the installments due and is completely repudiated by the promisor, the person entitled to the annuity has no redress except to bring actions for the installments as they become due, does not commend itself to us although several cases cited in Mobley v. N. Y. Ins. Co., 74 Fed. (2d) 588 (C. C. A. 5), have so held. With respect to War Risk insurance cases, also referred to in the Mobley opinion, in those that have come under our notice the issue has generally been whether the insured brought himself [fol. 19] within the terms of the policy. In few if any cases did the government repudiate or disavow the contract.

The fact that the plaintiff's right to receive further payments rested on certain conditions to be performed by him does not bar the recovery of damages. They are allowed in

many cases of that character. (173 U. S. 14 to 16.) Nor does the fact that the defendant's obligation was only to pay money prevent the assessment of damages for the entire value of the contract including future payments,—as the cases above referred to illustrate. Commercial paper stands on a special footing as was said in Roehm v. Horst, 178 U. S. 1 at 17.

The declaration asserts a claim based on the plaintiff's expectation of life according to the standard mortality tables. If such tables are admissible when the life in question is that of a person totally disabled and uninsurable,—which is a question to be decided in the first instance by the trial judge and on which we express no opinion,—plainly they are only evidence to be considered in connection with all the other evidence in estimating the value to the plaintiff of the contract which was broken.

The judgment of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion; the appellant recovers costs of appeal.

[fol. 20] RECITAL AS TO HEARING

On April 11 and 12, 1935, this cause came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—July 13, 1935

This cause came on to be heard April 11 and 12, 1935, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, July 13, 1935, here ordered, adjudged and decreed as follows: The judgment of the District Court is reversed and the case is remanded to that court for further proceedings not incon-

sistent with the opinion passed down this day; the appellant recovers costs of appeal.

By the Court.

Arthur I. Charron, Clerk.

RECITAL AS TO ORDER DENYING REHEARING

Thereafter, to wit, on August 6, 1935, a petition for rehearing was filed by appellee, which was denied by order of court on October 9, 1935.

RECITAL AS TO ORDER STAYING MANDATE

Thereafter, to wit, on October 10, 1935, mandate was stayed until further order of court.

Exhibit "A"

NEW YORK LIFE
INSURANCE COMPANY
A MUTUAL COMPANY

AGREES TO PAY

to PANAGIOTIS AND KYRIANCOULA VIGLAS, PARENTS OF THE INSURED, SHARE AND SHARE ALIKE *** Beneficiary
(with right on the part of the Insured to change the Beneficiary in the manner provided herein)

*** TWO THOUSAND *** Dollars
(THE FACE OF THIS POLICY)

upon receipt of due proof of the death of

*** DEMETRIOS P. VIGLAS *** the Insured,

or *** FOUR THOUSAND *** Dollars
(DOUBLE THE FACE OF THIS POLICY)

if such death resulted from accident as defined under "Double Indemnity" on the second page hereof and subject to the provisions therein set forth.

Either such sum will be increased by any outstanding dividend additions and dividend deposits as provided herein.

And upon receipt of due proof that the Insured is totally and presumably permanently disabled before age 60, as defined under "Total and Permanent Disability" on the second page hereof,

THE COMPANY AGREES TO PAY TO THE INSURED A MONTHLY INCOME

of * TWENTY *** Dollars, increasing after five and ten years of continuous disability, and to waive payment of premiums, as provided therein.**

This contract is made in consideration of the payment in advance of the sum of $ 38.00, the receipt of which is hereby acknowledged, constituting the first premium and maintaining this Policy for the period terminating on the SEVENTH day of AUGUST Nineteen Hundred and TWENTY-SEVEN, and of a like sum on said date and every SIX calendar months thereafter during the life of the Insured until premiums for TWENTY full years in all shall have been paid from the date on which this Policy takes effect.

The premium paying period may be shortened by application of dividend additions and dividend deposits as provided herein.

This Policy takes effect as of the SEVENTH day of FEBRUARY Nineteen Hundred and TWENTY-SEVEN, which day is the anniversary of the Policy.

THE BENEFITS AND PROVISIONS printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In Witness Whereof the NEW YORK LIFE INSURANCE COMPANY has caused this contract to be signed this SEVENTH day of FEBRUARY Nineteen Hundred and TWENTY-SEVEN

Edward B. Johnson
Secretary

Darwin P. Kingsley
President

925-62
L. P. L.
I. D.-D. I.

Registrar

Age 23 Insurance Payable at Death. Premiums Payable for 20 years unless Dividends Applied to Shorten Premium-Paying Period. Disability Benefits providing for Increasing Monthly Income. Double Indemnity for Fatal Accident. Annual Participation in Surplus.

Examined WD LE

21-22

DOUBLE INDEMNITY

The Double Indemnity provided on the first page hereof shall be payable upon receipt of due proof that the death of the Insured resulted directly and independently of all other causes from bodily injury effected solely through external, violent and accidental means and occurred within ninety days after such injury.

Double Indemnity shall not be payable if the Insured's death resulted from self-destruction, whether sane or insane; from the taking of poison or inhaling of gas, whether voluntary or otherwise; from committing an assault or felony; from war or any act incident thereto; from engaging in riot or insurrection; from participation as a passenger or otherwise in aviation or aeronautics; or, directly or indirectly, from infirmity of mind or body, from illness or disease, or from any bacterial infection other than bacterial infection occurring in consequence of accidental and external bodily injury. The Company shall have the right and opportunity to examine the body, and to make an autopsy unless prohibited by law.

Double Indemnity shall not apply to the Temporary Insurance or to the Paid-up Insurance provided herein under "Surrender Values", or to any Dividend Additions provided under "Participation in Surplus — Dividends".

The total premium stated on the first page hereof includes a SEMI annual premium of $ 1.64 for the Double Indemnity Benefit.

TOTAL AND PERMANENT DISABILITY

Disability shall be considered total whenever the Insured is so disabled by bodily injury or disease that he is wholly prevented from performing any work, from following any occupation, or from engaging in any business for remuneration or profit, provided such disability occurred after the insurance under this policy took effect and before the anniversary of the policy on which the Insured's age at nearest birthday is sixty.

Upon receipt at the Company's Home Office, before default in payment of premium, of due proof that the Insured is totally disabled as above defined, and will be continuously so totally disabled for life, or if the proof submitted is not conclusive as to the permanency of such disability, but establishes that the Insured is, and for a period of not less than three consecutive months immediately preceding receipt of proof has been, totally disabled as above defined, the following benefits will be granted:

(*a*) **Waiver of Premium.**—The Company will waive the payment of any premium falling due during the period of continuous total disability, the premium waived to be the annual, semi-annual or quarterly premium according to the mode of payment in effect when disability occurred.

(*b*) **Increasing Income Payments.**—The Company will pay to the Insured the monthly income stated on the first page hereof ($10 per $1,000 of the face of this policy) for each completed month from the commencement of and during the period of continuous total disability. The amount of the monthly income shall increase after sixty consecutive monthly payments have been made to one and one-half times such amount, and after sixty further consecutive monthly payments have been made to twice such amount. If disability results from insanity, payment will be made to the beneficiary in lieu of the Insured.

In event of default in payment of premium after the Insured has become totally disabled as above defined, the policy will be restored and the benefits shall be the same as if said default had not occurred, provided due proof that the Insured is and has been continuously from date of default so totally disabled and that such disability will continue for life or has continued for a period of not less than three consecutive months, is received by the Company not later than six months after said default.

The total and irrecoverable loss of the sight of both eyes or of the use of both hands or of both feet or of one hand and one foot shall constitute total disability for life.

Before making any income payment or waiving any premium, the Company may demand due proof of the continuance of total disability, but such proof will not be required oftener than once a year after such disability has continued for two full years. Upon failure to furnish such proof, or if the Insured performs any work, or follows any occupation, or engages in any business for remuneration or profit, no further income payments shall be made nor premiums waived. If the Insured shall furnish due proof that he has again become totally and presumably permanently disabled, as herein defined, the Disability Benefits herein provided shall be the same in amount as if no prior disability had existed.

The sum payable in any settlement of the policy shall not be reduced by income payments made nor by premiums waived under the above provisions. Dividends, loan and surrender values shall be the same as if the waived premiums had been duly paid. Any disability benefit due but unpaid at the time of the Insured's death shall be payable to the person entitled to the proceeds of the policy.

Disability Benefits shall not apply if the disability of the Insured shall result from self-inflicted injury or from military or naval service in time of war, or from engaging as a passenger or otherwise in aviation or aeronautics; nor shall these benefits apply to the Temporary Insurance or to the Paid-up Insurance provided herein under "Surrender Values", or to any Dividend Additions provided under "Participation in Surplus—Dividends".

The total premium stated on the first page hereof includes a SEMI annual premium of $ 4.32 for Disability Benefits.

Any premium due on or after the anniversary of the policy on which the age of the Insured at nearest birthday is sixty, will be reduced by the amount of premium charged for Disability Benefits. Upon written request signed by the Insured and upon return of this policy for proper indorsement, the Company will terminate this provision and thereafter the premium shall be reduced by the amount charged for Disability Benefits.

23-24

PARTICIPATION IN SURPLUS—DIVIDENDS

The proportion of divisible surplus accruing upon this Policy shall be ascertained annually. Beginning at the end of the second insurance year, and on each anniversary thereafter, such surplus as shall have been apportioned by the Company to this Policy shall at the option of the Insured be either

(*a*) Paid in cash; or

(*b*) Applied toward payment of premiums; or

(*c*) Applied to purchase a participating paid-up addition to the sum insured (herein referred to as Dividend Additions); or

(*d*) Left to accumulate at such rate of interest as the Company may declare on funds so held, but at a rate never less than three per cent compounded and credited annually. Such accumulated dividends (herein referred to as Dividend Deposits) may be withdrawn in cash by the Insured on any anniversary of the Policy or shall be payable at the maturity of the Policy to the person entitled to its proceeds.

If no option is selected, the dividend will be applied to the purchase of a dividend addition to the sum insured. The Insured may surrender any dividend addition for cash at any time not later than three months after any default in the payment of premium, and the cash value thereof shall never be less than the original cash dividend.

DIVIDENDS MAY BE APPLIED TO DECREASE NUMBER OF PREMIUM PAYMENTS OR MATURE POLICY AS AN ENDOWMENT

Whenever the cash value of the Policy including the cash value of any dividend additions and dividend deposits shall equal the net single premium at the attained age of the Insured for a fully paid participating Policy of the same kind and amount as this Policy, calculated on the same basis as the premium on this Policy, the Company, upon the written request of the Insured, will indorse this Policy as fully paid, whereupon the payment of premium will be discontinued; or, whenever said cash value shall equal the face amount of this Policy, the Company, upon due surrender of the Policy, will pay the face amount of the Policy in cash, less any indebtedness to the Company.

MISCELLANEOUS BENEFITS

Assignment.—Any assignment of this Policy must be made in duplicate and one copy filed with the Company at its Home Office. The Company assumes no responsibility for the validity of any assignment.

Change of Beneficiary.—The Insured may from time to time change the beneficiary, unless otherwise provided by indorsement on this Policy or unless there be an existing assignment of this Policy. Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect. After such indorsement the change will relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before receipt of such written notice at its Home Office. In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

Grace.—If any premium is not paid on or before the day it falls due the policy-holder is in default; but a grace of one month (not less than thirty days) will be allowed for the payment of every premium after the first, during which time the insurance continues in force. If death occurs within the period of grace the overdue premium will be deducted from the amount payable hereunder.

Interest Allowed at Settlement of Death Claims.—Interest will be allowed on the proceeds of the Policy payable as a death claim from date of receipt of due proof of death at any office of the Company until the date settlement is made at the Home Office. Interest shall be at the rate declared by the Company on such funds, but at a rate not less than three per cent per annum.

Reinstatement.—This Policy may be reinstated at any time within five years after any default, upon written application by the Insured and presentation at the Home Office of evidence of insurability satisfactory to the Company and upon payment of overdue premiums with five per cent interest thereon from their due date. Any indebtedness to the Company at date of default must be paid or reinstated with interest thereon in accordance with the loan provisions of the Policy.

Privilege of Change to Other Plans of Insurance.—At any time before default in payment of premium, provided the Insured is then less than 55 years of age and has not become disabled under the disability provisions hereof, the Insured may, without medical re-examination, exchange this Policy for a Policy upon any plan of insurance having a higher rate of premium issued by the Company at the time this Policy takes effect for the same amount as this Policy and containing the same Disability and Double Indemnity Benefits. Such exchange shall be effective upon surrender of this Policy and the payment of the difference in premiums with compound interest at the rate of six per cent per annum from the due date of each premium to the date of exchange; allowance will be made for any larger cash dividends on the new plan. The new Policy will take effect as of the date of this Policy and the premium will be at the rate which would have been charged if the Policy had been originally issued on the new plan.

Residence, Travel and Occupation.—This Policy is free of conditions as to residence, travel, occupation, and military or naval service, except as provided herein under Disability and Double Indemnity Benefits.

Rights of Insured.—The Insured, during his lifetime, and without the consent of the beneficiary, may receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy, unless otherwise provided by indorsement hereon.

25-26

OPTIONAL METHODS OF SETTLEMENT

The Insured, or in case the Insured shall not have done so, the beneficiary after the Insured's death, may, by written notice to the Company at its Home Office, make the proceeds of this Policy, in whole or in part, payable under one of the following options. Any such election or any change in election shall not take effect until indorsed on the Policy by the Company at its Home Office. The optional methods of settlement are available whether such proceeds are payable as a death claim or on maturity as an Endowment, or upon surrender of the Policy for its cash value, provided the instalment or interest payment to any payee is not less than $10.

Option 1.—The proceeds in whole or in part may be left with the Company subject to withdrawal at any time on demand in sums of not less than one hundred dollars. The Company will credit interest annually on the proceeds so left with it at such rate as it may each year declare on such funds, and guarantees that the rate shall be not less than three per cent.

Option 2.—The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly instalments for a fixed period as may be agreed upon, in accordance with the following table.

Option 3.—The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly instalments for a fixed period of five, ten or twenty years, as may be agreed upon, and for the remaining lifetime of the payee, in accordance with the following table.

Option 4.—The proceeds in whole or in part may be left with the Company at interest until the death of the payee. The Company will pay interest thereon annually, semi-annually, quarterly or monthly, as may be agreed upon, at such rate as the Company may declare each year on such funds, and guarantees that the interest per one thousand dollars of the proceeds shall be not less than $30 when paid annually, $14.89 when paid semi-annually, $7.42 when paid quarterly, or $2.47 when paid monthly.

Option 5.—The proceeds in whole or in part may be left with the Company at interest and paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the entire proceeds left with the Company, including interest thereon as provided in Option 1, have been paid, provided that the fixed amount payable each year shall be not less than five per cent of the original proceeds left with the Company.

The first instalment under Options 2 and 3 will be payable on the date when the proceeds of the Policy become due, and the instalment payment on each anniversary of the first payment will be increased by such additional interest, in excess of three per cent per annum, as the Company may declare on such funds for that year. The additional interest under Option 2 will be calculated on the unpaid instalments commuted at three per cent per annum, and under Option 3 on the unpaid instalments for the fixed period selected, commuted at three per cent per annum.

When the proceeds of the Policy become payable the Company will deliver to each payee a certificate evidencing the rights and benefits of such payee under the option selected.

At the death of any payee any unpaid sum left with the Company under Options 1, 4 or 5 with accrued interest to date of payment, or the commuted value at three per cent of any unpaid instalments under Option 2, or the commuted value at three per cent of any unpaid instalments for the fixed period selected under Option 3, will be paid in one sum to the executors or administrators of the payee, unless otherwise agreed in writing.

The Insured may direct in writing that the benefits under the above options shall not be transferable nor subject to commutation or incumbrance during the lifetime of the payee.

MONTHLY AND ANNUAL PAYMENTS FOR EACH $1,000 OF PROCEEDS OF POLICY

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment under Option 2, and not less than these respective percentages under Option 3.

OPTION 2			OPTION 3—LIFE INCOME TO PAYEE WITH INCOME GUARANTEED FOR													
			Age of Payee When Proceeds Become Payable	5 Years Certain		10 Years Certain		20 Years Certain		Age of Payee When Proceeds Become Payable	5 Years Certain		10 Years Certain		20 Years Certain	
Number of Years' Payments	Monthly Payment	Annual Payment		Monthly Payment	Annual Payment	Monthly Payment	Annual Payment	Monthly Payment	Annual Payment		Monthly Payment	Annual Payment	Monthly Payment	Annual Payment	Monthly Payment	Annual Payment
2	$42.86	$507.39	10 and under	$3.81	$44.85	$3.75	$44.21	$3.58	$42.20	48	$5.36	$62.61	$5.17	$60.51	$4.60	$54.20
3	28.99	343.23	11	3.83	45.07	3.77	44.41	3.59	42.56	49	5.45	63.63	5.24	61.40	4.65	54.71
4	22.06	261.19	12	3.85	45.30	3.79	44.62	3.61	42.54	50	5.54	64.70	5.32	62.33	4.69	55.24
5	17.91	211.99	13	3.87	45.54	3.81	44.84	3.62	42.71	51	5.64	65.83	5.41	63.30	4.74	55.77
6	15.14	179.22	14	3.89	45.78	3.83	45.07	3.64	42.90	52	5.74	67.02	5.49	64.30	4.78	56.30
7	13.16	155.83	15	3.91	46.03	3.85	45.29	3.65	43.08	53	5.85	68.26	5.58	65.35	4.83	56.84
8	11.68	138.30	16	3.94	46.27	3.87	45.53	3.67	43.27	54	5.97	69.57	5.68	66.44	4.87	57.37
9	10.53	124.69	17	3.96	46.52	3.89	45.76	3.69	43.47	55	6.09	70.95	5.78	67.57	4.92	57.90
10	9.61	113.81	18	3.98	46.77	3.91	45.99	3.70	43.66	56	6.22	72.40	5.88	68.75	4.96	58.43
11	8.86	104.92	19	4.00	47.02	3.93	46.23	3.72	43.87	57	6.35	73.93	5.98	69.98	5.00	58.95
12	8.24	97.53	20	4.02	47.28	3.95	46.48	3.74	44.07	58	6.49	75.53	6.09	71.24	5.05	59.46
13	7.71	91.29	21	4.05	47.55	3.97	46.74	3.76	44.29	59	6.64	77.22	6.21	72.55	5.09	59.96
14	7.26	85.94	22	4.07	47.84	4.00	47.01	3.78	44.52	60	6.80	78.99	6.32	73.94	5.13	60.45
15	6.87	81.32	23	4.10	48.14	4.02	47.29	3.80	44.75	61	6.96	80.85	6.44	75.31	5.17	60.92
16	6.53	77.29	24	4.12	48.45	4.05	47.59	3.82	45.00	62	7.13	82.81	6.57	76.75	5.20	61.37
17	6.23	73.74	25	4.15	48.77	4.07	47.90	3.84	45.25	63	7.31	84.87	6.70	78.23	5.24	61.80
18	5.96	70.59	26	4.18	49.12	4.10	48.22	3.86	45.51	64	7.51	87.03	6.83	79.75	5.27	62.20
19	5.73	67.78	27	4.21	49.47	4.13	48.56	3.89	45.79	65	7.71	89.31	6.96	81.30	5.30	62.59
20	5.51	65.25	28	4.25	49.85	4.16	48.91	3.91	46.07	66	7.92	91.69	7.09	82.89	5.33	62.94
21	5.32	62.98	29	4.28	50.24	4.19	49.28	3.94	46.37	67	8.14	94.19	7.23	84.50	5.36	63.27
22	5.15	60.91	30	4.32	50.65	4.23	49.66	3.96	46.67	68	8.37	96.81	7.37	86.14	5.38	63.57
23	4.99	59.04	31	4.35	51.08	4.26	50.07	3.99	46.99	69	8.61	99.56	7.51	87.79	5.40	63.84
24	4.84	57.32	32	4.39	51.53	4.30	50.49	4.02	47.32	70	8.86	102.43	7.65	89.46	5.42	64.08
25	4.71	55.75	33	4.43	52.01	4.33	50.93	4.05	47.66	71	9.13	105.44	7.79	91.12	5.44	64.29
26	4.59	54.30	34	4.48	52.50	4.37	51.39	4.08	48.01	72	9.40	108.57	7.93	92.79	5.45	64.48
27	4.47	52.97	35	4.52	53.02	4.42	51.87	4.11	48.36	73	9.69	111.84	8.07	94.44	5.47	64.64
28	4.37	51.76	36	4.57	53.56	4.46	52.38	4.14	48.75	74	9.99	115.25	8.21	96.06	5.48	64.77
29	4.27	50.59	37	4.62	54.13	4.51	52.90	4.17	49.14	75	10.30	118.78	8.34	97.65	5.48	64.88
30	4.18	49.53	38	4.67	54.73	4.55	53.45	4.21	49.54	76	10.62	122.44	8.47	99.21	5.49	64.97
			39	4.73	55.36	4.60	54.03	4.24	49.96	77	10.95	126.22	8.59	100.71	5.50	65.05
			40	4.78	56.02	4.65	54.63	4.28	50.38	78	11.29	130.13	8.71	102.14	5.50	65.11
			41	4.84	56.71	4.71	55.26	4.32	50.82	79	11.64	134.14	8.82	103.51	5.50	65.15
			42	4.91	57.43	4.77	55.91	4.35	51.27	80	12.00	138.25	8.92	104.80	5.51	65.19
			43	4.97	58.19	4.83	56.60	4.39	51.73	81	12.36	142.44	9.02	106.01	5.51	65.21
			44	5.04	58.99	4.89	57.31	4.43	52.20	82	12.73	146.70	9.11	107.12	5.51	65.23
			45	5.12	59.83	4.95	58.06	4.48	52.69	83	13.09	151.00	9.19	108.14	5.51	65.24
			46	5.19	60.71	5.02	58.84	4.52	53.18	84	13.46	155.34	9.26	109.06	5.51	65.25
			47	5.27	61.64	5.09	59.66	4.56	53.68	85 and over	13.83	159.67	9.32	109.89	5.51	65.25

LOAN VALUES

After three full years' premiums have been paid and before default in the payment of premium, the Company will advance to the Insured on the sole security of this Policy, as duly evidenced in writing, an amount which with interest shall not exceed the Cash Surrender Value. Interest on the loan will be at the rate of six per cent per annum payable annually on the anniversary of the Policy. If interest is not paid when due, it shall be added to the principal. All or any part of the indebtedness may be repaid at any time while the Policy is in force. Failure to repay such indebtedness or to pay interest will not avoid the Policy, but whenever the amount of the total indebtedness equals the Cash Surrender Value, the Policy shall become void one month after the Company shall have mailed notice to the last known address of the Insured and of the assignee of record, if any.

TABLE OF LOAN-VALUES FOR EACH $1,000 OF THE FACE AMOUNT

Years' Premiums Paid	Loan Value	Years' Premiums Paid	Loan Value
3	$40	15	$311
4	55	16	338
5	76	17	366
6	96	18	396
7	117	19	426
8	140	20	457
9	165	21ST YEAR	466
10	188	22ND "	475
11	212	23RD "	484
12	235	24TH "	494
13	260	25TH "	503
14	285		"

SURRENDER VALUES

In event of default in payment of premium after three full years' premiums have been paid, the following benefits shall apply:

(a) Temporary Insurance—Insurance for the face of the Policy plus any dividend additions and any dividend deposits and less the amount of any indebtedness hereon, shall, upon expiry of the period of grace, be continued automatically as Temporary Insurance as from the date of default for such term as the Cash Surrender Value less any indebtedness hereon will purchase as a net single premium at the attained age of the Insured, according to the American Table of Mortality and interest at 3 per cent. This Temporary Insurance will be without participation in surplus.

(b) Participating Paid-up Insurance—Within three months after such default, but not later, the insured may surrender this Policy and elect in place of such Temporary Insurance to have this Policy indorsed for the amount of Participating Paid-up Insurance which the Cash Surrender Value at date of default less any indebtedness hereon, will purchase as a net single premium at the attained age of the Insured at the date of default according to the American Table of Mortality and interest at 3 per cent. The Insured may obtain a loan on such Paid-up Insurance or surrender it within one month after any anniversary for its cash surrender value.

TABLE OF GUARANTEED SURRENDER VALUES

After Policy has been in force	Cash Surrender Value for each $1,000 of the Face Amount	Paid-up Life Insurance for each $1,000 of the Face Amount	Temporary Insurance from date of default	
			Years	Days
3	$43	$119	5	307
4	59	163	8	104
5	81	220	11	256
6	102	270	14	323
7	125	326	18	194
8	149	383	21	349
9	175	440	24	349
10	200	496	27	186
11	225	546	29	145
12	250	596	31	13
13	276	647	32	174
14	303	697	33	288
15	330	748	35	14
16	359	798	36	116
17	389	849	37	270
18	420	899	39	173
19	452	950	41	335
20	485	1000	..	...
21	495			
22	504	POLICY PAID-UP		
23	514	PARTICIPATING.		
24	524			
25 YRS.	534			

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Values for later years will be computed on the same basis and will be furnished on request

(c) Cash Surrender Value—If the Policy shall not have been indorsed for Participating Paid-up Insurance, the Insured, within three months after such default, but not later, may surrender this Policy and all claims thereunder and receive its Cash Surrender Value as at date of default less any indebtedness hereon. The Cash Surrender Value shall be the reserve on the face amount of the Policy at date of default, omitting fractions of a dollar per thousand of insurance, and the reserve on any outstanding dividend additions and any outstanding dividend deposits, and less a surrender charge for the third to the ninth years, inclusive, of not more than one and one-half per cent of the face of the Policy. The reserve shall be computed on the basis of the American Table of Mortality and interest at 3 per cent.

Cash Surrender Value of Fully Paid Policy—If this Policy shall have become fully paid by its terms, the Insured may surrender the Policy and all claims thereunder within one month after any anniversary of the policy and receive its cash surrender value less any indebtedness hereon. Such cash surrender value shall be computed on the basis described under (c) above.

The values in the "Table of Guaranteed Surrender Values" are computed in accordance with the above provisions, on the basis of $1,000 of face amount, assuming that premiums have been duly paid for the number of years stated, that there is no indebtedness to the Company, that there are no outstanding dividend additions nor dividend deposits, and after deduction of the surrender charge, if any.

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2551-4

TERM INSURANCE IN CASE OF LOAN

Any loan under this Policy may be covered by term insurance as follows:

1. The Insured must furnish evidence of insurability satisfactory to the Company.
2. The premium shall be computed at the attained age of the Insured at the time the term insurance is made or renewed.
3. Term insurance shall not extend beyond the next anniversary, but under the same conditions may be renewed from year to year. No term insurance shall be made or renewed after age sixty-five.
4. If the term insurance exceeds the indebtedness, the Company may cancel the excess and refund the unearned premium.
5. Term insurance takes effect upon delivery to the Insured of the Company's Policy therefor. The sum payable as term insurance shall be applied to the cancelation of the indebtedness.

PREMIUMS FOR EACH $100 OF TERM INSURANCE

Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year
15	$0.72	28	$0.79	41	$0.96	54	$1.67
16	0.74	29	0.80	42	0.99	55	1.79
17	0.74	30	0.81	43	1.01	56	1.91
18	0.74	31	0.82	44	1.04	57	2.08
19	0.75	32	0.83	45	1.07	58	2.31
20	0.75	33	0.84	46	1.11	59	2.58
21	0.76	34	0.85	47	1.15	60	2.87
22	0.76	35	0.86	48	1.20	61	3.18
23	0.77	36	0.87	49	1.24	62	3.61
24	0.77	37	0.89	50	1.33	63	3.96
25	0.78	38	0.90	51	1.46	64	3.66
26	0.78	39	0.92	52	1.46		
27	0.79	40	0.94	53	1.57		

For periods of less than one year, the premium shall be at the rate of one-tenth of the one year's premium for each month and fraction of a month

OTHER PROVISIONS

Age.—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Payment of Premiums.—All premiums are payable on or before their due date at the Home Office of the Company or to an authorized agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company, and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official premium receipt. The premium may be made payable annually, semi-annually or quarterly in advance at the Company's respective rates for such modes of payment and the mode of payment may be changed by agreement in writing and not otherwise. The payment of the premium shall not maintain the Policy in force beyond the date when the next payment becomes due, except as to the benefits provided for herein after default in premium payment.

Indebtedness.—Any indebtedness to the Company against this Policy will be deducted in any settlement thereof.

Self-Destruction.—In event of self-destruction during the first two insurance years, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company and no more.

The Contract.—The Policy and the application therefor, copy of which is attached hereto, constitute the entire contract. All statements made by the Insured shall, in absence of fraud, be deemed representations and not warrantics, and no statement shall avoid the Policy or be used in defense to a claim under it, unless it is contained in the written application and a copy of the application is indorsed upon or attached to this Policy when issued. No agent is authorized to make or modify this contract, or to extend the time for the payment of premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements. All benefits under this Policy are payable at the Home Office of the Company in the City and State of New York.

Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits.

REGISTER OF CHANGE OF BENEFICIARY

NOTE.—NO CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS INDORSED ON THIS POLICY BY THE COMPANY AT THE HOME OFFICE

DATE OF REQUEST	BENEFICIARY	INDORSED BY

31-32

9 727-569

APPLICATION TO THE NEW YORK LIFE INSURANCE COMPANY—Part I.

I, Demetrios P. Vigias
(Print name in full)

Residence	Place of Business	Present Occupation	Born at
State Mass	Mass	Counter man	Pindasistes
County Suffolk	Suffolk	State exact duties in full	Asia Minor
Town Boston	Boston		on 15 day of Jan. 1904
Street Tremont St. Hungtington ave.	305	Other Occupations (if any)	Race or nationality Greek
No. 430 R.F.D.			Not married (Strike out one)
Name of firm or employer Excelsior Lunch			Send all communications to Residence / Place of Business (Strike out one)
Former residence* 346 Tremont St.	Former place of business*		Former firm or employer* Excelsior Lunch

Cornerstone Application

APPLY TO THE NEW YORK LIFE INSURANCE COMPANY FOR INSURANCE AS FOLLOWS:

2. Sum to be insured, $ 3000 — The Sum is payable [illegible] Demetrios P. Vigias — Age nearest birthday 23

3. Plan of Insurance 20 payment life — Date of this application / Date Policy is written (Strike out one)

4. Dividend to be { a Paid in cash; b Applied to purchase additional paid-up insurance; c Applied to purchase additional paid-up insurance; d Left to accumulate at interest, subject to my order; e Applied on the Accelerative Endowment plan. (Strike out four)

NOTE.—Option e applies only to Endowment policies containing the Accelerative Endowment option.

5. I designate as Beneficiary to receive the proceeds of policy in event of death, and reserve the right to change the Beneficiary from time to time,
Beneficiary (Print name in full) Panagiotis P. Papaioannou Legal
Who resides at Pindasistes Asia Minor Relationship to me my legal heir

6. a The following is all the insurances I now have on my life:
State name of Company and Amount (If none, say none) None
b The insurance for which I am now applying is not intended to take the place of insurance carried with this or any other Company. If so, give particulars: None

7. Of the insurances on my life the amount which includes benefits in event of total disability is $ None (If none, say none)

8. No Company has declined to issue insurance on my life [illegible] insured or offered to issue insurance on my life differing from the insurance applied for, except as follows: (If none, say none) None

9. ADDITIONS OR AMENDMENTS. (For Home Office use only)

(211) Rate inserted $ 20.22

It is mutually agreed as follows: 1. That the insurance hereby applied for shall not take effect unless and until the policy is delivered to and received by the applicant and the first premium thereon paid in full during his lifetime, and then only if the applicant has not consulted or been treated by any physician since his medical examination; provided, however, that if the applicant, at the time of making this application, pays the agent in cash the full amount of the first premium for the insurance applied for in Questions 2 and 3 and so declares in this application and receives from the agent a receipt therefor on the receipt form which is attached hereto, and if the Company, after medical examination and investigation, shall be satisfied that the applicant was, at the time of making this application, insurable and entitled under the Company's rules and standards to the insurance, on the plan and for the amount applied for in Questions 2 and 3, at the Company's published premium rate corresponding to the applicant's age, then said insurance shall take effect and be in force under and subject to the provisions of the policy applied for from and after the time this application is made, whether the policy be delivered to and received by the applicant or not. 2. That a receipt on the form attached as a coupon to this application form is the only receipt the agent is authorized to give for any payment made before the delivery of the policy. 3. That only the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company can make, modify or discharge contracts, or waive any of the Company's rights or requirements; that notice to or knowledge of the soliciting agent or the Medical Examiner is not notice to or knowledge of the Company, and that neither one of them is authorized to accept risks or to pass upon insurability. 4. That by receiving and accepting said policy, any additions or amendments hereto which the Company may make and refer to in Question 9 above entitled "Additions or Amendments" are hereby ratified.

Dated at Boston this 21 day of Janu. 1921 Demetrios P. Vigias
Witnessed by Christ N. Katsaros Agent. Signature of the person applying for insurance
(Write the name in full)

Other Agents
Names and Residences of three intimate friends.

DECLARATION TO BE SIGNED BY APPLICANT UPON MAKING ANY PAYMENT WITH THIS APPLICATION.

Dated at Janu. 21 1921

I Hereby Declare that I have paid to Christ N. Katsaros
First — Dollars ($ .50) in cash,
and that I hold his receipt for the same, made up, without alteration, on the receipt form detached from and corresponding in date and number with this application. I assent to the terms of said receipt.

(Signature of Applicant)
THIS CITY HERE Demetrios P. Vigias

No. 807223

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COPY OF APPLICATION

Application to the New York Life Insurance Company—PART II 2727 - 569

ANSWERS TO THE MEDICAL EXAMINER

THIS EXAMINATION MUST BE MADE IN PRIVATE; NO AGENT OR THIRD PERSON BEING PRESENT

NOTICE TO MEDICAL EXAMINER: Use only black ink. This examination is to be photographed

DO NOT USE DASHES OR DITTO MARKS IN ANSWERING QUESTIONS

1. A. What is your occupation? (*Full details.*) — A. Waila
   B. How long have you been engaged in your present occupation? — B.
   C. What was your previous occupation? — C. Glass Weaver
   D. Have you ever changed your occupation or place of residence on account of your health? (*If so, give full details.*) — D. No

2. Do you intend to change your occupation or make a journey outside of Continental United States or Canada? (*If so, give full details.*) — No

3. A. How many aerial flights have you taken and when last? — A.
   B. State whether as passenger or pilot and whether you are a Reservist. — B. Never

4. In what States have you lived the last ten years, and which years in each? (*If outside the U. S., in what countries, and which years in each.*) — Mass 4 yrs N.H. 2 yrs. Germany Greece

5. A. How frequently, if at all, and in what quantity do you drink beer, wine, spirits or other intoxicants? — A. Occasionally
   B. How frequently, if at all, and in what quantity have you drunk any of them in the past? — B.
   C. Have you within the last five years drunk any of them to excess? — C. Never
   D. Do you now take or have you ever taken morphine, cocaine, or any other habit forming drugs? — D. —

		"Yes" or "No"	Name of each Company or Insurer.
6. A.	Have you now pending any other application for insurance on your life or for the reinstatement of insurance?	No	
B.	Have you ever been examined either on or in anticipation of an application for insurance without receiving such insurance?	No	
C.	Have you ever been declined for life insurance or for the reinstatement of life insurance?	No	
D.	Have you ever been offered a policy differing in plan or amount or in premium rate from that applied for?	No	

		"Yes" or "No"	If the answer to any query is "Yes" give DETAILS and, if within five years, name and address of every Physician consulted.
7. A.	Have you had any accident or injury or undergone any surgical operation?	No	
B.	Have you been under observation or treatment in any hospital, asylum or sanitarium?	No	
C.	Has albumin or sugar been found in your urine?	No	
D.	Have you been found to have a high blood pressure?	No	
E.	Have you raised or spat blood?	No	
F.	Have you gained or lost in weight in the last year?	No	Gain? Loss? Cause?

		"Yes" or "No"	Name of Ailment or Disease	No. of Attacks	Date	Duration	Severity	Remarks and, if within five years, name and address of every Physician consulted
8.	Have you consulted a physician for or suffered from any ailment or disease of							
A.	The Brain or Nervous System?	No						
B.	The Heart, Blood Vessels or Lungs?	No						
C.	The Stomach or Intestines, Liver, Kidneys or Bladder?	No						
D.	The Skin, Middle Ear or Eyes?	No						
9.	Have you had Rheumatism, Gout or Syphilis?	No						
10.	Have you consulted a physician for any ailment or disease not included in your above answers?	No						

		Name and Address	Date	Reason for Consultation, Examination or Treatment
11.	What physician or physicians, if any, not named above, have you consulted or been examined or treated by within the past five years?	—		

(*If none, say none.*)

12. Family Record	Age if Living	Condition of Health, if not good, give full details	Age at Death	Cause of Death	How Long Ill
Father	60	Good			
Mother	55	"			
Brothers 3	25	"			
	27	"			
1	23	"			
	35	"			
Sisters 2	21	"			

13. A. Is any person in your immediate household now ill with consumption? (*If so, state who and what precautions are being taken.*) — No

B. Has any person in your immediate household suffered from or died of that disease within the past year? — No

On behalf of myself and of every person who shall have or claim any interest in any insurance made hereunder, I declare that I have carefully read each and all of the above answers, that they are each written as made by me, and that each of them is full, complete and true, and agree that the Company believing them to be true shall rely and act upon them.

I expressly waive, on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has heretofore attended or examined me, or who may hereafter attend or examine me, from disclosing any knowledge or information which he thereby acquired.

Dated this 2 day of [illegible] 1921

Witnessed by [illegible] M. D., Medical Examiner. Signature of the person applying for insurance: Demetrios P. Vagis

NOTE

This copy should be carefully examined and if any error or omission is found, full particulars, with the number of the policy, should be sent immediately to the Home Office of the Company, No. 51 Madison Avenue, Madison Square, New York, N. Y.

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"EXHIBIT A"

5790 Law

NEW YORK LIFE INSURANCE COMPANY

DEMETRIOS P. VIGLAS

No. 9 727 569

Amount $ 2000

SEMI Annual Premium $ 38.00

Payable on the 7TH day of FEBRUARY AND AUGUST

NEW ENGLAND Branch

Notice: It is not necessary for the Insured or the Beneficiary to employ the agency of any person in collecting the insurance under this Policy, or in receiving any of its benefits. Time and expense will be saved by writing direct to the Home Office, 51 Madison Avenue, Madison Square, New York, N. Y.

Insurance payable at death.

Premiums payable for 20 years unless dividends applied to shorten premium paying period.

Disability Benefits providing for increasing monthly income.

Double Indemnity for fatal accident.

Annual Participation in Surplus.

925-62

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INDORSEMENTS

In accordance with Provision 9 of Section 132 of Chapter 175 of the General Laws of the Commonwealth of Massachusetts, granting loans (except for the purpose of paying premiums on policies in the Company) or the payment of the Cash Surrender Value may be deferred for not exceeding ninety days after application therefor is made.

(914-22.)

Secretary

[fol. 39] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 23, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,156. U. S. Circuit Court of Appeals, First Circuit. Term No. 602. New York Life Insurance Company, petitioner, vs. Demetrios P. Viglas. Petition for writ of certiorari and exhibit thereto. Filed November 23, 1935. Term No. 602, O. T., 1935.

(7296-C)